

**AMENDMENTS TO AGENCY RULEMAKING  
REGARDING CRIMINAL PENALTIES**

2009 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies various statutory provisions regarding rulemaking authority by repealing statutory provisions that authorize certain state agencies to determine by administrative rule what conduct constitutes a criminal penalty.

**Highlighted Provisions:**

This bill:

- ▶ repeals certain statutory grants of administrative rulemaking authority to the Department of Health, the Department of Insurance, the Labor Commission, and the Department of Natural Resources that determine what conduct constitutes a criminal penalty; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 23-13-11**, as last amended by Laws of Utah 1995, Chapter 211
- 23-20-3**, as last amended by Laws of Utah 1995, Chapter 211
- 26-21-16**, as last amended by Laws of Utah 1997, Chapter 209
- 26-23-6**, as last amended by Laws of Utah 1995, Chapter 202
- 31A-2-308**, as last amended by Laws of Utah 2007, Chapter 309
- 34-23-402**, as last amended by Laws of Utah 1997, Chapter 375
- 34A-2-407**, as last amended by Laws of Utah 2008, Chapter 382
- 34A-2-801**, as last amended by Laws of Utah 2008, Chapters 90 and 382

32           **54-7-15**, as last amended by Laws of Utah 2008, Chapter 382

33           **61-1-21**, as last amended by Laws of Utah 2001, Chapter 149

34           **61-1-24**, as last amended by Laws of Utah 1991, Chapter 161

35   ENACTS:

36           **23-21-7**, Utah Code Annotated 1953

37   REPEALS AND REENACTS:

38           **63-11-17.3**, as last amended by Laws of Utah 1997, Chapter 315

39   REPEALS:

40           **73-18b-3**, as last amended by Laws of Utah 1997, Chapter 276

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42   *Be it enacted by the Legislature of the state of Utah:*

43           Section 1. Section **23-13-11** is amended to read:

44           **23-13-11. Violations.**

45           Except as otherwise provided in this title:

46           (1) [~~Unless otherwise provided,~~] a violation of any provision of this title is a class B  
47   misdemeanor[~~;~~]; and

48           (2) [~~A~~] a violation of any rule or proclamation of the Wildlife Board [is a class C  
49   misdemeanor] is an infraction.

50           Section 2. Section **23-20-3** is amended to read:

51           **23-20-3. Taking, transporting, selling, or purchasing protected wildlife illegal**  
52   **except as authorized -- Penalty.**

53           (1) Except as provided in this title or a rule, proclamation, or order of the Wildlife  
54   Board, a person may not:

55           ~~[(a) take or permit his dog to take;]~~

56           ~~[(i) protected wildlife or their parts;]~~

57           ~~[(ii) an occupied nest of protected wildlife; or]~~

58           ~~[(iii) an egg of protected wildlife;]~~

59           ~~[(b) transport, ship, or cause to be shipped protected wildlife or their parts;]~~

60           ~~[(c) sell or purchase protected wildlife or their parts; or]~~

61           ~~[(d) possess protected wildlife or their parts unaccompanied by a valid license, permit,~~  
62   ~~tag, certificate of registration, bill of sale, or invoice.]~~

63           (a) take protected wildlife or its parts;

64           (b) collect, import, possess, transport, propagate, store, donate, transfer, or export  
65 protected wildlife or its parts;

66           (c) take, possess, sell, purchase, barter, donate, or trade protected wildlife or its parts  
67 without having previously procured the necessary licenses, permits, tags, stamps, certificates of  
68 registration, authorizations, and receipts required in this title or an administrative rule,  
69 proclamation, or order of the Wildlife Board;

70           (d) take protected wildlife with any weapon, ammunition, implement, tool, device or  
71 any part of any of these not specifically authorized in this title or a rule, proclamation, or order  
72 of the Wildlife Board;

73           (e) possess while in pursuit of protected wildlife any weapon, ammunition, implement,  
74 tool, device, or any part of any of these not specifically authorized in this title or a rule,  
75 proclamation, or order of the Wildlife Board;

76           (f) take protected wildlife using any method, means, process, or practice not  
77 specifically authorized in this title or a rule, proclamation, or order of the Wildlife Board;

78           (g) take protected wildlife outside the season dates, location boundaries, and daily time  
79 frames established in rule, proclamation, or order of the Wildlife Board;

80           (h) take protected wildlife in excess of the bag and possession limits established in  
81 rule, proclamation, or order of the Wildlife Board;

82           (i) take protected wildlife in an area closed to hunting, trapping, or fishing by rule,  
83 proclamation, or order of the Wildlife Board, or by executive order of the division director  
84 pursuant to Subsection 23-14-8(4);

85           (j) practice falconry or capture, possess, or use birds in falconry;

86           (k) take any wildlife from an airplane or any other airborne vehicle or device or any  
87 motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles;

88           (l) hold in captivity at any time any live protected wildlife;

89           (m) use or permit a dog or other domestic or trained animal to take protected wildlife;

90           (n) remove, damage, or destroy an occupied nest of protected wildlife;

91           (o) release captured or captive wildlife into the wild;

92           (p) use spotlighting to take protected wildlife;

93           (q) employ or use a means of concealment or camouflage while taking protected

wildlife which is prohibited in this title or a rule, proclamation, or order of the Wildlife Board;

(r) possess or use bait or other attractant to take protected wildlife which is prohibited in this title or a rule, proclamation, or order of the Wildlife Board;

(s) use any decoy or recorded or electronically amplified call which is prohibited in this title or a rule, proclamation, or order of the Wildlife Board to take protected wildlife;

(t) commercially harvest protected wildlife, including brine shrimp and brine shrimp eggs;

(u) utilize protected wildlife for commercial purposes or financial gain;

(v) enter, establish, or hold a contest or tournament involving the taking of protected wildlife;

(w) operate or participate in a commercial hunting area as described in Section 23-17-6; or

(x) operate or participate in a cooperative wildlife management unit as defined in Section 23-23-2.

(2) Possession of protected wildlife without a valid license, permit, tag, certificate of registration, bill of sale, or invoice is prima facie evidence that the protected wildlife was illegally taken and is illegally held in possession.

(3) A person is guilty of a class B misdemeanor if ~~he~~ the person:

(a) violates any provision of Subsection (1); and

(b) does so with criminal negligence as defined in Subsection 76-2-103(4).

Section 3. Section 23-21-7 is enacted to read:

**23-21-7. Unlawful uses and activities on division lands.**

(1) Except as authorized by statute, rule, contractual agreement, special use permit, certificate of registration, or public notice, a person may not on division land:

(a) remove, extract, use, consume, or destroy any improvement or cultural or historic resource;

(b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;

(c) allow livestock to graze;

(d) remove any plant or portion of a plant for commercial gain purposes;

(e) enter, use, or occupy division land that is posted against entry, use, or occupancy;

(f) enter, use, or occupy division land as part of a group of more than 25 people;

(g) enter, use, or occupy division land while engaged in or part of an organized event;

(h) use, occupy, destroy, move, or construct any structure, including fences, water control devices, roads, survey and section markers, or signs;

(i) prohibit, prevent, or obstruct public entry on division lands when public entry is authorized by the division;

(j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies;

(k) solicit, promote, negotiate, barter, sell, or trade any product or service on, or obtained from, division lands for commercial gain;

(l) park a motor vehicle or trailer or camp for more than 14 consecutive days unless the area is posted for a different duration;

(m) light a fire without taking adequate precaution to prevent spreading of the fire or leave a fire unattended;

(n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;

(o) use motorized vehicles of any kind except as authorized by declaration, management plan, or posting; or

(p) use division lands for any purpose that violates applicable land use restrictions imposed by statute, rule, or by the division.

(2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:

(a) the value of the resource removed, destroyed, or extracted;

(b) the amount of damage caused; and

(c) whichever is greater of:

(i) the value of any losses or expenses caused as a result of interference with authorized activities; or

(ii) the consideration which would have been charged by the division for use of the land during the period of trespass.

(3) This section does not apply to division employees or division volunteers while acting in the lawful performance of their duties.

(4) Except as otherwise provided by statute, the criminal penalty for a violation of any

provision of this section is prescribed in Section 23-13-11.

Section 4. Section **26-21-16** is amended to read:

**26-21-16. Operating facility in violation of chapter a misdemeanor.**

~~[(1) Any]~~ In addition to the penalties in Section 26-23-6, any person owning, establishing, conducting, maintaining, managing, or operating a health care facility in violation of this chapter [or rules of the committee] is guilty of a class A misdemeanor.

~~[(2) This section takes precedence over Section 26-23-6.]~~

Section 5. Section **26-23-6** is amended to read:

**26-23-6. Criminal and civil penalties and liability for violations.**

(1) (a) Any person, association, or corporation, or the officers of any of them, who violates any provision of this chapter or lawful orders ~~[, or rules adopted under this chapter by the department: (a) shall be assessed, in a civil proceeding, a penalty not to exceed the sum of \$5,000; or (b)]~~ of the department or a local health department in a criminal proceeding is guilty of a class B misdemeanor for the first violation, and for any subsequent similar violation within two years, is guilty of a class A misdemeanor, except this section does not establish the criminal penalty for violation of Section 26-23-5.5.

(b) Conviction in a criminal proceeding does not preclude the department or a local health department from assessment of any civil penalty, administrative civil money penalty or to deny, revoke, condition, or refuse to renew a permit, license or certificate or to seek other injunctive or equitable remedies.

(2) Any person, association, or corporation, or the officers of any of them, who violates any provision of this title or lawful orders of the department or a local health department, or rules adopted under this title by the department:

(a) shall be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of \$10,000 per violation; or

(b) in an administrative action in accordance with Title 63, Chapter 46b, Administrative Procedures Act, or similar procedures adopted by local or county government, a penalty not to exceed the sum of \$10,000 per violation.

(3) Assessment of any civil penalty or administrative penalty does not preclude the department or a local health department from seeking criminal penalties or to deny, revoke, impose conditions on, or refuse to renew a permit, license, or certificate or to seek other

187 injunctive or equitable remedies.

188       ~~[(2)]~~ (4) In addition to any penalties imposed under Subsection (1), the person,  
189 association, or corporation, or the officers of any of them is liable for any expense incurred by  
190 the department in removing or abating any health or sanitation violations, including any  
191 nuisance, source of filth, cause of sickness, or dead animal.

192       ~~[(3) Assessment or conviction under this chapter or any other public health law does~~  
193 ~~not relieve the person assessed or convicted from civil liability for any act which was also a~~  
194 ~~violation of the public health laws.]~~

195       ~~[(4)]~~ (5) Each day of violation of ~~[this chapter]~~ a provision of this title, lawful orders of  
196 the department or a local health department, or rules adopted by the department under it ~~[may~~  
197 ~~be]~~ is a separate violation.

198       Section 6. Section **31A-2-308** is amended to read:

199       **31A-2-308. Enforcement penalties and procedures.**

200       (1) (a) A person who violates any insurance statute or rule or any order issued under  
201 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from  
202 the violation, in addition to any other forfeiture or penalty imposed.

203       (b) (i) The commissioner may order an individual producer, limited line producer,  
204 customer service representative, managing general agent, reinsurance intermediary, adjuster, or  
205 insurance consultant who violates an insurance statute or rule to forfeit to the state not more  
206 than \$2,500 for each violation.

207       (ii) The commissioner may order any other person who violates an insurance statute or  
208 rule to forfeit to the state not more than \$5,000 for each violation.

209       (c) (i) The commissioner may order an individual producer, limited line producer,  
210 customer service representative, managing general agent, reinsurance intermediary, adjuster, or  
211 insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to  
212 the state not more than \$2,500 for each violation. Each day the violation continues is a  
213 separate violation.

214       (ii) The commissioner may order any other person who violates an order issued under  
215 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each  
216 day the violation continues is a separate violation.

217       (d) The commissioner may accept or compromise any forfeiture under this Subsection

(1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.

(2) When a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:

(a) enforcing the commissioner's order;

(b) (i) directing compliance with the commissioner's order and restraining further violation of the order; and

(ii) subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.

(3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c).

(b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

(4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment:

(a) the commissioner may certify the fact of the failure to the court by affidavit; and

(b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

(5) (a) The proceeds of all forfeitures under this section, including collection expenses, shall be paid into the General Fund.

(b) The expenses of collection shall be credited to the department's budget.

(c) The attorney general's budget shall be credited to the extent the department reimburses the attorney general's office for its collection expenses under this section.

(6) (a) Forfeitures and judgments under this section bear interest at the rate charged by the United States Internal Revenue Service for past due taxes on the:



- 249 (i) date of entry of the commissioner's order under Subsection (1); or  
250 (ii) date of judgment under Subsection (2).
- 251 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the  
252 forfeiture and accrued interest are fully paid.
- 253 (7) A forfeiture may not be imposed under Subsection (2)(c) if:
- 254 (a) at the time the forfeiture action is commenced, the person was in compliance with  
255 the commissioner's order; or
- 256 (b) the violation of the order occurred during the order's suspension.
- 257 (8) The commissioner may seek an injunction as an alternative to issuing an order  
258 under Subsection 31A-2-201(4).
- 259 (9) (a) A person is guilty of a class B misdemeanor if that person:
- 260 (i) intentionally violates:
- 261 (A) an insurance statute [~~or rule~~] of this state; or
- 262 (B) an order issued under Subsection 31A-2-201(4);
- 263 (ii) intentionally permits a person over whom that person has authority to violate:
- 264 (A) an insurance statute [~~or rule~~] of this state; or
- 265 (B) an order issued under Subsection 31A-2-201(4); or
- 266 (iii) intentionally aids any person in violating:
- 267 (A) an insurance statute [~~or rule~~] of this state; or
- 268 (B) an order issued under Subsection 31A-2-201(4).
- 269 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may  
270 be fined not more than:
- 271 (i) \$10,000 if a corporation; or
- 272 (ii) \$5,000 if a person other than a corporation.
- 273 (c) If the person is an individual, the person may, in addition, be imprisoned for up to  
274 one year.
- 275 (d) As used in this Subsection (9), "intentionally" has the same meaning as under  
276 Subsection 76-2-103(1).
- 277 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,  
278 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this  
279 Subsection (10).

(b) When the value of the property, money, or other things obtained or sought to be obtained in violation of Subsection (10)(a):

(i) is less than \$5,000, a person is guilty of a third degree felony; or

(ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

(11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

(i) when a licensee of the department, other than a domestic insurer:

(A) persistently or substantially violates the insurance law; or

(B) violates an order of the commissioner under Subsection 31A-2-201(4);

(ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27a-207; or

(iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.

(b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

(12) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Section 7. Section **34-23-402** is amended to read:

**34-23-402. Violation -- Criminal penalty.**

(1) The commission may prosecute a misdemeanor criminal action in the name of the state. The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

(2) It is a class B misdemeanor for a person, whether individually or as an officer, agent, or employee of any person, firm, or corporation to:

(a) knowingly employ a minor or permit a minor to work in a repeated violation of this chapter;

(b) refuse or knowingly neglect to furnish to the commission, any information requested by the commission under this chapter;

(c) refuse access to that person's place of business or employment to the commission or its authorized representative when access has been requested in conjunction with an investigation related to this section;

(d) hinder the commission or its authorized representative in the securing of any information authorized by this section;

(e) refuse or knowingly omit or neglect to keep any of the records required by this chapter;

(f) knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;

(g) discharge an employee or threaten to or retaliate against an employee because:

(i) the employee has testified;

(ii) is about to testify; or

(iii) the employer believes that the employee may testify in any investigation or proceedings relative to the enforcement of this chapter; and

(h) willfully violate any ~~rule or~~ order issued under this chapter.

(3) This section does not apply to violations of Section 34-23-301.

Section 8. Section **34A-2-407** is amended to read:

**34A-2-407. Reporting of industrial injuries -- Regulation of health care providers -- Funeral expenses.**

(1) As used in this section, "physician" is as defined in Section 34A-2-111.

(2) (a) Any employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury.

(b) If the employee is unable to provide the notification required by Subsection (2)(a), the following may provide notification of the injury to the employee's employer:

(i) the employee's next-of-kin; or

(ii) the employee's attorney.

(c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational Disease Act, shall comply with rules adopted by the commission regarding disclosure of medical records of the employee medically relevant to the industrial accident or occupational disease claim.

(3) (a) An employee is barred for any claim of benefits arising from an injury if the employee fails to notify within the time period described in Subsection (3)(b):

- (i) the employee's employer in accordance with Subsection (2); or
- (ii) the division.

(b) The notice required by Subsection (3)(a) shall be made within:

- (i) 180 days of the day on which the injury occurs; or
- (ii) in the case of an occupational hearing loss, the time period specified in Section 34A-2-506.

(4) The following constitute notification of injury required by Subsection (2):

(a) an employer's or physician's injury report filed with:

- (i) the division;
- (ii) the employer; or
- (iii) the employer's insurance carrier; or

(b) the payment of any medical or disability benefits by:

- (i) the employer; or
- (ii) the employer's insurance carrier.

(5) (a) In the form prescribed by the division, each employer shall file a report with the division of any:

- (i) work-related fatality; or
- (ii) work-related injury resulting in:
  - (A) medical treatment;
  - (B) loss of consciousness;
  - (C) loss of work;
  - (D) restriction of work; or
  - (E) transfer to another job.

(b) The employer shall file the report required by Subsection (5)(a) within seven days after:

- (i) the occurrence of a fatality or injury;
- (ii) the employer's first knowledge of the fatality or injury; or
- (iii) the employee's notification of the fatality or injury.

(c) (i) An employer shall file a subsequent report with the division of any previously

373 reported injury that later results in death.

374 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the  
375 division within seven days following:

376 (A) the death; or

377 (B) the employer's first knowledge or notification of the death.

378 (d) A report is not required to be filed under this Subsection (5) for minor injuries,  
379 such as cuts or scratches that require first-aid treatment only, unless:

380 (i) a treating physician files a report with the division in accordance with Subsection  
381 (9); or

382 (ii) a treating physician is required to file a report with the division in accordance with  
383 Subsection (9).

384 (6) An employer required to file a report under Subsection (5) shall provide the  
385 employee with:

386 (a) a copy of the report submitted to the division; and

387 (b) a statement, as prepared by the division, of the employee's rights and  
388 responsibilities related to the industrial injury.

389 (7) Each employer shall maintain a record in a manner prescribed by the ~~[division]~~  
390 commission by rule of all:

391 (a) work-related fatalities; or

392 (b) work-related injuries resulting in:

393 (i) medical treatment;

394 (ii) loss of consciousness;

395 (iii) loss of work;

396 (iv) restriction of work; or

397 (v) transfer to another job.

398 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to  
399 make reports, to maintain records, or to file reports with the division as required by this section  
400 is:

401 (i) guilty of a class C misdemeanor; and

402 (ii) subject to a civil assessment:

403 (A) imposed by the division, subject to the requirements of Title 63G, Chapter 4,

404 Administrative Procedures Act; and  
405 (B) that may not exceed \$500.  
406 (b) An employer is not subject to the civil assessment or guilty of a class C  
407 misdemeanor under this Subsection (8) if:  
408 (i) the employer submits a report later than required by this section; and  
409 (ii) the division finds that the employer has shown good cause for submitting a report  
410 later than required by this section.  
411 (c) A civil assessment collected under this Subsection (8) shall be deposited into the  
412 Uninsured Employers' Fund created in Section 34A-2-704.  
413 (9) (a) A physician attending an injured employee shall comply with rules established  
414 by the commission regarding:  
415 (i) fees for physician's services;  
416 (ii) disclosure of medical records of the employee medically relevant to the employee's  
417 industrial accident or occupational disease claim; and  
418 (iii) reports to the division regarding:  
419 (A) the condition and treatment of an injured employee; or  
420 (B) any other matter concerning industrial cases that the physician is treating.  
421 (b) A physician who is associated with, employed by, or bills through a hospital is  
422 subject to Subsection (9)(a).  
423 (c) A hospital providing services for an injured employee is not subject to the  
424 requirements of Subsection (9)(a) except for rules made by the commission that are described  
425 in Subsection (9)(a)(ii) or (iii).  
426 (d) The commission's schedule of fees may reasonably differentiate remuneration to be  
427 paid to providers of health services based on:  
428 (i) the severity of the employee's condition;  
429 (ii) the nature of the treatment necessary; and  
430 (iii) the facilities or equipment specially required to deliver that treatment.  
431 (e) This Subsection (9) does not prohibit a contract with a provider of health services  
432 relating to the pricing of goods and services.  
433 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:  
434 (a) the division;

(b) the employee; and

(c) (i) the employer; or

(ii) the employer's insurance carrier.

~~[(11)(a) Except as provided in Subsection (11)(b), a person subject to Subsection (9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor for each offense.]~~

~~[(b) A person subject to Subsection (9)(a)(iii) is not guilty of a class C misdemeanor under this Subsection (11), if:]~~

~~[(i) the person files a late report; and]~~

~~[(ii) the division finds that there is good cause for submitting a late report.]~~

~~[(12)]~~ (11) (a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine:

(i) whether goods provided to or services rendered to an employee are compensable pursuant to this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act, including:

(A) medical, nurse, or hospital services;

(B) medicines; and

(C) artificial means, appliances, or prosthesis;

(ii) the reasonableness of the amounts charged or paid for a good or service described in Subsection ~~[(12)]~~ (11)(a)(i); and

(iii) collection issues related to a good or service described in Subsection ~~[(12)]~~ (11)(a)(i).

(b) Except as provided in Subsection ~~[(12)]~~ (11)(a), Subsection 34A-2-211(7), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than the commission for collection or payment for goods or services described in Subsection ~~[(12)]~~ (11)(a) that are compensable under this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act.

Section 9. Section **34A-2-801** is amended to read:

**34A-2-801. Initiating adjudicative proceedings -- Procedure for review of administrative action.**

(1) (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee

or a dependent any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee;

(ii) a representative of the employee, the qualifications of whom are defined in rule by the commission; or

(iii) a dependent as described in Section 34A-2-403.

(b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employer;

(ii) the insurance carrier; or

(iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.

(c) A person providing goods or services described in Subsections 34A-2-407~~[(12)]~~(11) and 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.

(d) An attorney may file an application for hearing in accordance with Section 34A-1-309.

(2) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (3), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the day on which the decision is issued.

(3) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

(b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.

(c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:

(i) as part of the motion for review; or



(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the day on which the motion for review is filed with the Division of Adjudication.

(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

(4) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(5) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.

(6) The commissioner or Appeals Board shall promptly notify the parties to a proceeding before it of its decision, including its findings and conclusions.

(7) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative Procedures Act.

(8) (a) Within 30 days after the day on which the decision of the commissioner or Appeals Board is issued, an aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

(b) In an action filed under Subsection (8)(a):

(i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and

(ii) the commission shall be made a party.

(c) A party claiming to be aggrieved may seek judicial review only if the party exhausts the party's remedies before the commission as provided by this section.

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.

Section 10. Section **54-7-15** is amended to read:

**54-7-15. Review or rehearing by commission -- Application -- Procedure -- Prerequisite to court action -- Effect of commission decisions.**

(1) Before seeking judicial review of the commission's action, any party, stockholder,

bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.

(2) (a) After any order or decision has been made by the commission, any party to the action or proceeding, any stockholder, bondholder, or other party pecuniarily interested in the public utility affected may apply for rehearing of any matters determined in the action or proceeding.

(b) An applicant may not urge or rely on any ground not set forth in the application in an appeal to any court.

(c) Any application for rehearing not granted by the commission within 20 days is denied.

(d) (i) If the commission grants any application for rehearing without suspending the order involved, the commission shall issue its decision on rehearing within 20 days after final submission.

(ii) If the commission fails to render its decision on rehearing within 20 days, the order involved is affirmed.

(e) Unless an order of the commission directs that an order is stayed or postponed, an application for review or rehearing does not excuse any corporation or person from complying with and obeying any order or decision of the commission.

(3) Any order or decision on rehearing that abrogates, changes, or modifies an original order or decision has the same ~~[force and]~~ effect as an original order or decision, but does not affect any right, or the enforcement of any right, arising from the original order or decision unless ~~[so]~~ ordered by the commission.

(4) An order of the commission, including a decision on rehearing:

(a) ~~[shall have binding force and]~~ has effect only with respect to a public utility that is an actual party to the proceeding in which the order is rendered; and

(b) does not determine any right, privilege, obligation, duty, constraint, burden, or responsibility with respect to a public utility that is not a party to the proceeding in which the order is rendered unless, in accordance with Subsection 63G-3-201(6), the commission makes a rule that incorporates the one or more principles of law that:

(i) are established by the order;

(ii) are not in commission rules at the time of the order; and

(iii) affect the right, privilege, obligation, duty, constraint, burden, or responsibility with respect to the public utility.

Section 11. Section **61-1-21** is amended to read:

**61-1-21. Penalties for violations.**

(1) A person is guilty of a third degree felony who willfully violates any provision of this chapter except Sections 61-1-1 and 61-1-16, or who willfully violates any ~~[rule or]~~ order under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be false or misleading in any material respect.

(2) A person who willfully violates Section 61-1-1:

(a) is guilty of a third degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000;

(b) is guilty of a second degree felony if:

(i) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more; or

(ii) (A) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; and

(B) in connection with that violation, the violator knowingly accepted any money representing:

(I) equity in a person's home;

(II) a withdrawal from any individual retirement account; or

(III) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code; or

(c) is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years or more than 15 years if:

(i) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more; and

(ii) in connection with that violation, the violator knowingly accepted any money representing:

(A) equity in a person's home;

(B) a withdrawal from any individual retirement account; or

(C) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code.

(3) ~~[No]~~ A person may not be imprisoned for the violation of any ~~[rule or]~~ order if ~~[he]~~ the person proves that ~~[he]~~ the person had no knowledge of the ~~[rule or]~~ order.

(4) In addition to any other penalty for a criminal violation of this chapter, the sentencing judge may impose any penalty or remedy provided for in Subsection 61-1-20(2)(b).

Section 12. Section **61-1-24** is amended to read:

**61-1-24. Rules, forms, and orders of division.**

(1) (a) The division may make, amend, and rescind rules, forms, and orders when necessary to carry out the provisions of this chapter.

(b) For the purpose of rules and forms, the division may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

(2) (a) The division may not make, amend, or rescind any rule, form, or order unless it finds that the action is in the public interest, for the protection of investors, and consistent with the purposes of this chapter.

(b) In prescribing rules and forms, the division may cooperate with the securities administrators of the other states and the Securities and Exchange Commission to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(3) (a) The division may prescribe:

(i) the form and content of financial statements required under this chapter;

(ii) the circumstances under which consolidated financial statements shall be filed; and

(iii) whether or not any required financial statements shall be certified by independent public accountants.

(b) All financial statements shall be prepared in accordance with generally accepted accounting principles.

(4) All rules and forms of the division shall be published.

(5) ~~[No]~~ A provision of this chapter imposing any liability ~~[applies]~~ does not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the division, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

621           ~~[(6) The division may by rule classify specific acts as unlawful within the meaning of~~  
622 ~~Sections 61-1-1 and 61-1-2 if it finds that the acts could operate as a fraud or part of a device;~~  
623 ~~scheme, or artifice to defraud any person, and that the rule is not inconsistent with this chapter.]~~

624           Section 13. Section **63-11-17.3** is repealed and reenacted to read:

625           **63-11-17.3. Violations of title and rules.**

626           Unless otherwise provided in this title:

627           (1) a violation of any provision of this title is a class B misdemeanor; and

628           (2) a violation of any rule of the Parks Board is an infraction.

629           Section 14. **Repealer.**

630           This bill repeals:

631           Section **73-18b-3, Violation of regulations -- Misdemeanor.**